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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 01 022 53243 Office: CALIFORNIA SERVICE CENTER Date: FEB 06 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a company organized in the State of California in May of 1999. It purports to be engaged in wholesale trading. It seeks to employ the beneficiary as its president. Accordingly, it endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in an executive or managerial capacity.

On appeal, the petitioner submits additional information. The petitioner also contends that the number of the petitioner's employees should not be a factor in determining the beneficiary's status.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers.
-- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a

statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The issue in this proceeding is whether the petitioner has established that the beneficiary has been and would be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

i. directs the management of the organization or a major component or function of the organization;

ii. establishes the goals and policies of the organization, component, or function;

iii. exercises wide latitude in discretionary decision-making; and

iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner initially stated that the beneficiary had the following duties and would continue to perform these duties for the petitioner:

[The beneficiary] has been in charge of directing the overall business operation and development of the Company. Specifically, she utilized her experience as the Parent Company's Manager of Import Department to plan business development strategies; supervised the work of the general manager who oversees the routine business of the company; reviewed the work of the general manager and the purchasing manager; made final decisions on transactions over \$10,000; contacted the board of the Parent Company to coordinate the activities of the company with those of the Parent company.

The petitioner also provided copies of the second and third quarter California Form DE-6, Quarterly Wage and Withholding Reports for the year 2000. Each report revealed the petitioner employed three individuals including the beneficiary. The petitioner also provided its organizational chart depicting the beneficiary as president, a general manager, and a purchasing department manager.

The director requested a more detailed description of the beneficiary's duties in the United States. The director also requested a description of job positions for all employees under the beneficiary's supervision.

In response, the petitioner provided the same description as noted above and added that there are two departments under the general manager, the purchasing department and sales department with the sales department manager's position being vacant. The petitioner also added that the beneficiary "makes decisions on the hiring and promotion of the General Manager and department managers."

The director determined that the description of the beneficiary's duties was broad and general in nature. The director determined that the record was insufficient to support a finding that the beneficiary had been or would be employed in a managerial or executive capacity.

On appeal, the petitioner explains that it had bought a computer business and a cleaning service and that it was exploring other

business opportunities. The petitioner also submits a revised organizational chart depicting the addition of employees. The petitioner further submits its Internal Revenue Service (IRS) Form 941, Employer's Quarterly Federal Tax Return for the quarter ending in December of 2001 showing the addition of one employee. The petitioner requests reconsideration of its petition and asserts that its number of employees should not be a factor relating to the beneficiary's status.

The petitioner's explanation, assertion, and evidence are not persuasive. In examining the executive or managerial capacity of the beneficiary, the Service will look first to the petitioner's description of the job duties. See 8 C.F.R. 204.5(j)(5). As noted by the director, the petitioner has submitted a broad and general description of the beneficiary's duties for the petitioner. The petitioner's description refers, in part, to duties such as "plan[ing] business development strategies," and "directing the overall business operation and development of the Company." The Service is unable to determine from these general statements whether the beneficiary is performing managerial or executive duties with respect to these activities or whether the beneficiary is actually performing the activities. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has not provided sufficient supporting evidence that the beneficiary "supervised the work of the general manager who oversees the routine business of the company," or "reviewed the work of the general manager and the purchasing manager." Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The record contains little detail regarding the duties of these individuals. The record does not convey an understanding of the daily activities of these individuals. It is not possible to determine whether the petitioner employs either of these individuals in a managerial capacity other than in title or whether these individuals both carry out the daily tasks of the organization. The petitioner's evidence reveals that at most the beneficiary is acting as a first-line supervisor over non-managerial, non-supervisory, and non-professional employees.

The record contains insufficient evidence to demonstrate that the beneficiary has been employed in a primarily managerial or executive capacity or that the beneficiary's duties in the proposed position will be primarily managerial or executive in nature. The descriptions of the beneficiary's job duties fail to sufficiently describe the actual day-to-day duties of the beneficiary. The description of the duties to be performed by the beneficiary does not sufficiently demonstrate that the beneficiary

will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary has managed or will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve her from performing non-qualifying duties. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses an executive or managerial title. The petitioner has not established that the beneficiary has been employed in either a primarily managerial or executive capacity.

The petitioner's explanation that it is growing and is hiring additional employees is not relevant to the petition at hand. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45,49 (Comm. 1971). At the time of filing the petitioner was a two-year-old trading company that stated it had gross receipts in the amount of \$3,132,605. The petitioner claimed to employ the beneficiary as president, a general manager, and a purchasing manager. The petitioner did not submit evidence that it employed sufficient subordinate staff members to perform the actual day-to-day, non-managerial operations of the company. The petitioner has not provided sufficient evidence to demonstrate that its reasonable needs have been plausibly met by its employment of the beneficiary as the president, a general manager, and a purchasing manager. Based on the petitioner's lack of information on this issue, it is not possible to determine if the reasonable needs of the company could plausibly be met by the services of the staff on hand at the time the petition was filed. Further, the number of employees or lack of employees serves only as one factor in evaluating the claimed managerial or executive capacity of the beneficiary. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily executive or managerial capacity. As discussed above, the petitioner has not established this essential element of eligibility.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.